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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,511	11/16/2001	David J. Ross	990243C	9973

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Qualcomm Incorporated
Patents Department
5775 Morehouse Drive
San Diego, CA 92121-1714

EXAMINER

BHATTACHARYA, SAM

ART UNIT	PAPER NUMBER
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2685

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/991,511	Applicant(s) ROSS ET AL.	
	Examiner Sam Bhattacharya	Art Unit 2685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 11 and 21-23 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 11 21-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Elliot et al. (US 5,987,102).

Regarding claims 1 and 11, Elliot et al. disclose a wireless telephone, inherently including a speaker and a microphone for a user to carry on communication and a micro-browser or micro-client software in computer 402 having an Internet, Intranet, or Extranet address (internet telephony application), a voice CODEC manager software to the micro-browser or micro-client software; a real or virtual push-to-talk (PTT) button; means for sending; an outgoing

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streaming voice data message from the microphone through the voice CODEC manager software 626; and an indication that the PTT button has been depressed in response to a depression of the PTT button (sending a PTT message to a bridgeport 462); and means for sending an incoming streaming voice data message through the voice CODEC manager software to the speaker, in response to a release of the PTT button. See FIGS. 4 and 6, and col. 7, line 6 – col. 8, line 54.

3. Claims 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Maggenti (US 6,295,284 B1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claims 21-23, Maggenti discloses an arbitration system 150 that includes a memory 302, a receiver and transmitter (inherent when the arbitration takes place in a base station) and a processor 300 for receiving an indication that a push-to-talk button has been depressed at a wireless telephone, determining whether more than one wireless has a depressed PTT button indication, and arbitrating which wireless telephone is allowed to place a call. See FIG. 3 and col. 7, lines 9-21 and 57-64.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nguyen (US 6,021,326) discloses an arbitration system for PTT communication based on first come first served priority.

Response to Arguments

5. Applicants' arguments filed on 11/16/01 have been fully considered but they are not persuasive.

Applicants argue that Elliot et al. does not disclose "determining whether more than one wireless has a depressed PTT button indication" and "arbitrating which wireless telephone is allowed to place a streaming voice data message on the server," as allegedly in claim 1.

Applicants also argue that Elliot et al. does not disclose "arbitrating, if more than one wireless has a depressed PTT button indication, which wireless telephone is allowed to place a streaming voice data message on the server," as allegedly in claim 11.

However, it is respectfully pointed out that none of the above-quoted limitations are in fact recited in claim 1 or 11. Accordingly, Elliot et al. is maintained as a reference against claims 1 and 11.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Bhattacharya whose telephone number is (703) 605-1171. The examiner can normally be reached on 8:30 a.m. to 5:00 p.m., Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward F. Urban can be reached on (703) 305-4385. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sb


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